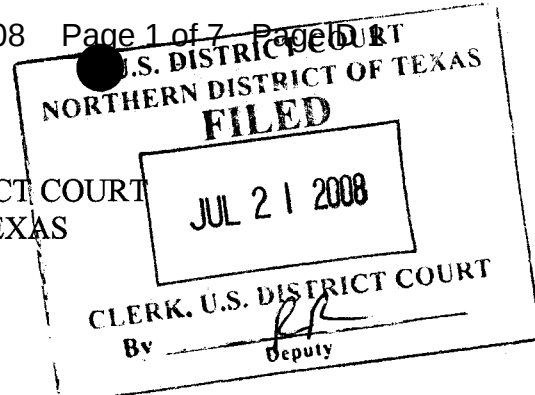


✓
ORIGINAL
LIN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JANICE OSBORNE

§
§
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§
§

V.

LEDCOR CONSTRUCTION INC.

CIVIL ACTION NO.

3-08 CV 1238-L**PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

23699

INTRODUCTION

1. The named Plaintiff alleges violations of the Fair Labor Standards Act ("FLSA") entitlement of the right to receive pay for all time worked for Defendant. Defendant has failed to pay Plaintiff in excess of forty (40) hours per week at a rate not less than one and one-half times the regularly hourly rate of pay at which such employees are compensated. Pursuant to 29 U.S.C. § 216(b), the named Plaintiff will be seeking to represent all other similarly situated past and present employees, as described herein, who have not been properly paid and to have this action certified as a collective action. For herself and all those similarly situated, the named Plaintiff seeks her unpaid wages, overtime, liquidated damages, all available equitable relief, attorney fees, and litigation expenses/costs, including expert witness fees and expenses.

PARTIES

2. The named Plaintiff is an individual who is a former employee of the Defendant, Ledcor Construction Inc. Plaintiff brings this action to recover unpaid compensation due to her and others similarly situated under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

3. In addition to the Plaintiff named herein, all other similarly situated persons, that is, all persons presently or formerly employed by Defendant in similar employment positions which are

not exempt from the minimum wage and overtime requirements of the FLSA, are entitled to collectively participate in this cause of action by choosing to “opt in” and submit a Written Consent to participate in this litigation as required by 29 U.S.C. § 216(b). This case is maintained as a collective action under and pursuant to the statutory requirements of the FLSA, 29 U.S.C. § 216(b). As soon as practicable after the commencement of this action and in accordance with the Local Rules of the Northern District of Texas, Plaintiff will file, pursuant to 29 U.S.C. § 216(b), a Motion to Facilitate a Collective Action.

4. Defendant Ledcor Construction Inc. (“Ledcor”) is a foreign corporation which is authorized and licensed to do business in the State of Texas, doing business in the Northern District of Texas as well as many states in the United States. Defendant Ledcor can be served with process in this case by serving its registered agent for service of process, C T Corporation System at 350 North St. Paul Street, Dallas, Texas 75201. At all times relevant to this lawsuit, Defendant has employed and continues to employ a number of employees in non-exempt work at its job sites. At all times relevant to this lawsuit, the Defendant has been and remains engaged in commerce within the meaning of 29 U.S.C. § 203(s)(6).

JURISDICTION AND VENUE

5. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, 29 U.S.C. § 216(b), and 28 U.S.C. § 1337. This action arises under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, et seq. Defendant does business within the Northern District of Texas and the Court has subject matter jurisdiction and personal jurisdiction to hear the case. *See* 29 U.S.C. § 201, et seq.

FACTS

6. Defendant Ledcor is an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

7. At all times relevant hereto, Defendant has been an enterprise engaged in commerce and/or in the production of goods for commerce within the meaning of section 3 of the FLSA, 29 U.S.C. § 203.

8. At all times relevant hereto, Defendant has been an employer subject to the wage and hour provisions of the FLSA.

9. Plaintiff began her employment at Ledcor on or about January 2003. Her job was the Site Project Administrator for Costco and Walmart projects that the Dallas office of Ledcor constructed within the past five years. When she began her employment, she was the Site Project Administrator at the Frisco and Plano sites and was paid on an hourly basis. Since then, she has been employed as the Site Project Administrator at the Lewisville, Texas site in 2004, the Sherman, Texas site in 2005, and the Garland, Texas site in 2007-2008. During her employment, she also worked on several job sites in Florida.

10. As a Site Project Administrator, Plaintiff was a non-exempt employee under the FLSA and entitled to overtime compensation for hours worked over 40 in a week. Defendant started her out as an hourly employee but later changed her classification to a salaried employee. However, Defendant misclassified her as an exempt, salaried employee. Plaintiff was not compensated for the time she worked over 40 hours in a week as an hourly or salaried employee during the relevant time frame.

11. Plaintiff regularly and consistently worked more than 40 hours per week with the knowledge of Defendant for the work activities described herein and for which Defendant did not pay Plaintiff overtime. Defendant was aware of Plaintiff's overtime work and intentionally did not pay her for those hours.

12. Defendant has repeatedly and willfully violated, and continues to willfully violate, the FLSA statutes referenced herein by failing to pay Plaintiff and other similarly situated employees, or former employees, for the hours worked by such employees in excess of forty (40) hours per week at a rate not less than one and one-half times the regularly hourly rate of pay at which such employees are compensated.

13. Plaintiff and other similarly situated current and former employees were employed in a position which is not exempt from the requirements that they be compensated for their hours of work by the payment of overtime. Defendant has engaged in a pattern, practice and policy of unlawful conduct by intentionally failing to pay the lawful and required overtime rate for hours worked beyond 40 per week in violation of the FLSA statutes referenced herein.

14. Plaintiff was told by Ledcor's Management that she was allowed to turn in only 80 hours on each time/pay period which covered a two-week span regardless of the time she actually worked. When she complained to management, she was told she could only turn in 80 hours regardless of the actual time worked.

CLAIMS

15. The Fair Labor Standards Act (29 U.S.C. § 201 et seq.) and the regulations promulgated thereunder govern the activities of the pay practices of employers involved in commerce. Plaintiff alleges that the failure of Defendant to pay Plaintiff for all hours worked is a direct violation of the FLSA statutes and regulations. Additionally, Plaintiff alleges that the failure to pay Plaintiff one and one-half her regular rate for all hours worked in excess of 40 hours in a work week is a direct violation of the FLSA statutes and regulations. Plaintiff will be seeking to represent all other similarly situated past and present employees, as described herein, who have not been properly paid for overtime work and to have this action certified as a collective action.

For herself and all those similarly situated, the named Plaintiff seeks her unpaid wages, overtime, liquidated damages, all available equitable relief, attorney fees, and litigation expenses/costs, including expert witness fees and expenses.

16. Section 215(a)(3) prohibits employers from discriminating against employees for engaging in a protected activity, including making informal complaints by employees to their employers about wage and hour issues. Plaintiff alleges that she was told to turn in only 80 hours on each time/pay period which covered a two-week span. When she internally complained to management, she was told she had to comply. Plaintiff alleges she was unlawfully terminated from her position in retaliation for making internal complaints regarding the unlawful wage and hour issues. Plaintiff seeks damages, all available equitable relief, attorney fees, and litigation expenses/costs, including expert witness fees and expenses for the unlawful retaliation she suffered.

REQUESTED RELIEF

17. Plaintiff has suffered and continues to suffer damages as a result of Defendant's failure and refusal to pay proper compensation because of the Defendant's continued violations of the FLSA. Plaintiff is entitled to a judgment granting her and similarly situated employees damages in the amount of the difference between the partial wages actually received by Plaintiff and the full wages she is entitled to recover under law, including all uncompensated overtime wages for hours worked.

18. Plaintiff suffered damages as a result of Defendant's unlawful retaliation against her when she informally complained to her supervisors regarding the unlawful wage and hour issues. Plaintiff is entitled to a judgment granting her damages for Defendant's unlawful conduct.

19. Plaintiff, in addition to her claim for actual damages, seeks injunctive relief from the Court to prevent future violations of the FLSA, as alleged herein. Plaintiff urges the Court to enter a permanent injunction against Defendant directing it to pay all of its employees for overtime hours worked.

JURY DEMAND

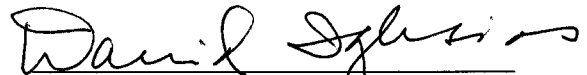
20. Plaintiff demands a trial by jury.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that judgment be granted:

1. Certifying this matter as a collective action pursuant to 29 U.S.C. § 216(b);
2. Ordering the Defendant to pay the Plaintiff and all other similarly situated employees compensation due as a result of Defendant's violation of the FLSA;
3. Ordering Defendant to pay the Plaintiff's liquidated damages;
4. Granting injunctive relief by ordering Defendant to comply with the requirements of the FLSA;
5. Ordering Defendant to pay Plaintiff's costs of court in this action;
6. Ordering Defendant to pay Plaintiff's reasonable attorneys' fees and litigation expenses/costs, including expert fees and expenses; and
7. Providing such other and further relief as is just and necessary.

Respectfully submitted,



ROSEMARY SAGE JONES

State Bar No. 17519275

DAVID IGLESIAS

State Bar No. 24051733

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100 E. Ferguson, Suite 500

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Telephone: 903-597-3307

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**ATTORNEYS FOR
JANICE OSBORNE**

JS 44 (Rev. 12/07)

ORIGINAL

CIVIL COVER SHEET

3-08CV1238-L

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of process and the requirements of the Federal Rules of Civil Procedure, as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Janice Osborne DEFENDANTS Ledcor Construction, Inc.

(b) County of Residence of First Listed Plaintiff Rains
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Dallas
(IN U.S. PLAINTIFF CASES ONLY)

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

(c) Attorney's (Firm Name, Address, and Telephone Number)
Rosemary Jones & David Iglesias
903-597-3301
Ramey & Flock, PC
100 E. Ferguson, Ste 500
Tyler, TX 75702

Attorneys (If Known) Phillip R. Jones
Locke Lord Bissell & Liddell
2200 Ross Ave, Ste 2200
Dallas, TX 75201
214-740-8529

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input checked="" type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☒ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 USC 201 et seq.

Brief description of cause:

FLSA overtime

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7/18/08

SIGNATURE OF ATTORNEY OF RECORD

David Iglesias

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE